Supreme Court, U.S.
FILED

(1)

No. 94-2108 JUN 23 1995

IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1995

MARJORIE STURGIS,

Pro Se Petitioner,

v.

JEFFERSON K. LOGAN
E. JEFFREY GRUBE
ROBERT T. MOULTON
MARK SOLOMON OF JACOBS AND SOLOMON

UNIVERSITY OF SOUTHERN CALIFORNIA;
EMPLOYERS INSURANCE OF WAUSAU;
JACOBS AND SOLOMON,

Respondents.

Petition for Writ of Certiorari
to the United States Court of Appeals
for the Ninth Circuit

PETITION FOR WRIT OF CERTIORARI

Marjorie Sturgis
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Pro Se Petitioner

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QUESTIONS PRESENTED

1. One of the most critical questions presented here is not whether this Court, or whether the Court of Appeals, would as in an original manner, have dismissed the pro se plaintiff's civil rights actions with prejudice, all the claims, and all the parties, including dismissal of the defaulted defendants, and not permitting default to be entered against the defaulted defendants, the reasonable question is whether the District Court abused its discretion, and/or applied an incorrect legal standard in doing so. Were the defaulted defendants discharged by operation of law? What was the applicable constitutional standard upon which it acted?

2. In abscence of considering any of the determinative factual issues presented by the Appellant's due process, and equal protection claims, the Court of Appeals, affirmed District

Court decision to dismiss the civil rights actions with prejudice. Since these were the very issues the Appellant relied upon for relief, the reasonable question is, did Court of Appeals apply an erroneous standard of Appellate Review when it affirmed District Court? What is the constitutional standard upon which it acted?

3. In a pro se civil rights action, is it settled practice that only the pro se plaintiff is to undergo depositions? Is it settled practice that the defense personally select and impanel a deposition referee, even though the referee is associated with the respective law firms?

4. Whether the right to conduct one's own defense is constitutionally guaranteed?

QUESTIONS PRESENTED - CONTINUED

5. Whether Employers Mutual Liability Insurance of Wisconsin was "manufactured" to perpetrate a fraud upon the petitioner?

6. Whether District Court abused its discretion when it ordered plaintiff to attend a hearing that had high potential for deprivation of substantive due process?

7. Whether the District Court abused its discretion when it did not order the defendants to produce the falsified documents as plaintiff had pleaded for in the related case Complaint?

PARTIES TO THE PROCEEDINGS

The caption of cases contain the names of parties to the proceedings in this Court.

It should be noted here that defendant Workers Compensation Appeals Board of the State of California name does not appear in the caption because it was not a party to the proceedings below, because this defendant has failed to file and serve a notice of appearance, or a pleading, or a motion in the case.

For purpose of the Appeal, the Court of Appeals ordered both cases consolidated on September 30, 1994.

TABLE OF CONTENTS

	Page
QUESTIONS PRESENTED	i
PARTIES TO THE PROCEEDINGS	iv
TABLE OF AUTHORITIES	vii
OPINION BELOW	2
JURISDICTION	2
STATUTORY PROVISIONS INVOLVED	2
CONSTITUTIONAL PROVISIONS	4
STATEMENT OF THE CASE	5
REASONS FOR GRANTING THE WRIT	11
ARGUMENT	15
CONCLUSION	40

TABLE OF CONTENTS - CONTINUED

APPENDIX:

APPENDIX A
Memorandum (unpublished) Court of Appeals

APPENDIX B
Order of Dismissal of the District Court

APPENDIX C
Excerpts from plaintiff's Amended Complaint

APPENDIX D
District Court Order Granting In Part Defendant University of Southern California's Motion to Dismiss and Denying the Motions to Dismiss of Defendants Jacobs and Solomon and Employers Mutual Liability Insurance of Wisconsin

TABLE OF AUTHORITIES

Cases — Page

American Cyanamid Co. V. F.T.C., 363 F.2d 757 16

Blackledge v. Perry, 417, U.S., at 27, 94 S.Ct., at 2102. 13

Caruth v. Pinkney, 683 F 2d 1044, cert. denied 459, U.S. 1214, 75, CA & ILL, (1982) 17

Chaffin v. Stynchcombe, 412 U.S., 32-33 N. 20, 93, S. Ct. (1986) 39

Chambers v. State of Florida, 60 S.Ct. 472, 309 U.S. 227,84 L.Ed. 716 14

Colton v. Kentucky, 407 U.S., 104, 92 S. CT., 32 L.Ed. 2d 854 (1953) 39

Draper v. W.C.A.B. of State of California, (App.2 Dist.1983) 195 Cal. Rptr. 248, 147 C.A. 3d 502 7

Frazier v. Heebe, 482 U.S. 641, 96 L.Ed. 2d 557, 107, S. Ct. 2607, 7 FR Serv 3d 1139 (1987) 40

Fuentes v. Shevin, 407 U.S. 67 (1972). §1291, 776 F.2d 1512 25

TABLE OF AUTHORITIES - CONTINUED

Cases — Page

Holt v. Com. of Va., 85 S. Ct. 1375, 381, U.S. 131, 14 L.Ed.2d. 290 16

Lee v. Fleming, 158 F.2d 984, cert. denied 67 S. Ct., 1186, 331 U.S. 805, 91 L.Ed. 1826 16

Los Angeles Dept. of Water and Power v. Manhart, 435 U.S. 702, 707, n.13, 98 S. Ct. 1370, 1374, 55 L. Ed. 2d 657 (1978) 36

Meritor Savings Bank v. Vinson, 477 U.S. 57, 66, 106, S. Ct. 2399, 2405, 91 L.Ed. 49 (1986) 36

North Carolina v. Pearce, 395 U.S., at 738, 89, S. Ct. 39

Pearson v. McGras, 60 S.Ct. 211, 308, U.S. 313, 84, L.Ed.293. 14

People v. McIntyre, 36 NY2d 10, 364 NYS2d 837, 324 NE2d, 322 ..... 17, 38

Schneckloth v. Bustamonte, 412 U.S. 218, 212 (1973) 21

TABLE OF AUTHORITIES - CONTINUED

Cases — Page

Sexton v. Barry, 233 F.2d, 220, certiorari denied, 77 S.Ct. 94, 352 U.S. 870, 1 L.Ed 76 14

United States v. Dintz, CA5, Fla 542, F2d 1174, cert. denied 429, U.S. 1104, 51 L.Ed. 2d 556, 97 S. Ct. 1133 (1976) 17

Wade v. Hunter, 33, U.S., 689, S.Ct., at 837 14

Washington v. Harper, 494 U.S. 210, 110 S. Ct. 102 25

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PETITION FOR WRIT OF CERTIORARI

Pro Se Petitioner, Marjorie Sturgis, pray that a WRIT OF CERTIORARI issue to review the unpublished MEMORANDUM of the United States Court of Appeals for the

Ninth Circuit that was filed and entered in these consolidated cases on March 29, 1995.

OPINION BELOW

The unpublished Memorandum of a panel of the Court of Appeals for the Ninth Circuit, affirming the District Court's Order of Dismissal with Prejudice of the civil rights actions, is reproduced as Appendix A.

JURISDICTION

The Motion for Stay of Mandate was denied on May 23, 1995. This Court has jurisdiction under 28 USCS Section 1254(1).

STATUTORY PROVISIONS INVOLVED

The statute involved is 28 USCS Section 1291 which provides the Court of Appeals with jurisdiction over final decisions of the District Court.

The statute involved is 28 USCS § 1654 which provides that in all courts of the United States, the parties may plead and conduct their own cases personally or by counsel as, by the rules of such courts, respectively, and are permitted to manage and conduct causes therein.

Section 5410 of the California Labor Code Law provides that nothing in this chapter shall bar the right of any injured employee to institute proceedings for the collection of compensation within five years after the date of the injury upon the grounds that the original injury has caused new and further disability or the need for vocational rehabilitation benefits. The jurisdiction of the Appeals Board in these cases shall be a continuing jurisdiction at all times within this period.

Civil Rights Act of 1964 (Title VII) (145, 167) states in part:

> Even without regard to tangible effects of objectively hostile or abusive work environment, very fact that discriminatory conduct is so severe or pervasive that it creates work environment

abusive to employees on basis of their race, gender, religion, or national origin offends Title VII's broad rule of workplace equality. Civil Rights Act of 1964, §§ 701 et seq., 703(a) (1), as amended, 42 USCA §§ 2000e et seq., 2000e-2(a) (1).

CONSTITUTIONAL PROVISIONS

United States Constitution, First Amendment: Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right to the people to peaceably assemble, and to petition the government for a redress of grievances.

United States Constitution, Fourth Amendment

> The right of the people to be secure in their persons, houses, papers and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

United States Constitution, Fifth Amendment

> No person shall be... deprived of life, liberty, or property, without the due process of law; nor shall private property be taken for public use, without just compensation.

United States Constitution, Fourteenth Amendment, Due Process Clause.

> [N]or shall any state deprive any person of life, liberty or property, without due process of law...

United States Code, Title 42:
Section 1983. Civil Action for Deprivation of Rights

> Every person, who under color of any statue, ordinance, regulation, custom, or usage, or any State or Territory, subjects or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof of the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress.

STATEMENT OF THE CASE

The case arise from work place injuries which the petitioner sustained while employed by the University of

Southern California.

On or about May 10, 1984, she filed a claim for workers compensation benefits with the Workers Compensation Appeals Board for the workplace injuries.

On or about November 30, 1987, the Workers Compensations Appeals Board determined that she was indeed entitled to a benefits award for the injuries.

On or about February 6, 1989, pursuant to California Labor Code § 5410, the petitioner filed a petition with the Workers Compensations Appeals Board to reopen the claim. California Labor Code § 5410 provides that:

> Nothing in this chapter shall bar the right of any injured employee to institute proceedings for the collection of compensation within five years after the date of the injury upon the collection of compensation within five years after the date of the injury upon the ground that the original injury has caused new and further disability or the need for vocational rehabilitation benefits. The jurisdiction of the appeals board in these cases shall be a continuing jurisdiction at all times within this period.

In § 5410, Compensation Proceedings, Notes of Decision, under Construction and Application, it states:

> This section allows reopening of prior findings and awards by Workers Compensation Appeals Board for new and further disability upon filing of petition of injured employee within five years of date of injury. Draper v. W.C.A.B. of State of California, (App.2 Dist.1983) 195 Cal. Rptr. 248, 147 C.A.3d 502.

Pursuant to a widespread pattern and practice of the Workers Compensation Appeals Board of the State of California, the case had been subjected to numerous continuances and postponements by the Workers Compensation judge for over three years for no reasonable cause.

On June 27, 1992, the petitioner wrote a letter to the Administrative Director in an endeavor to accomplish resolution of the case, (Appendix C Excerpts), (D.C. #93-5716, CR-1, exh. #5).

The reopening of the workers compensation claim represents constitutional and statutory violations of the

petitioner's First, Fourth and Fifth Amendment rights under color of state law.

The action poses the real possibility that the petitioner was unlawfully denied lawful workers compensation benefits in order to punish her for First Amendment activity, namely, freedom of speech, freedom of association, and freedom of inquiry (Appendix C, plaintiff's Amended Complaint-Excerpts only).

The loss of the petitioner's First, Fourth and Fifth Amendment rights dates back to August, 1992 (Appendix C, plaintiff's Amended Complaint, Excerpts only), when the defense attorney for defendant University of Southern California-administered by defendant Employers Insurance of Wausau, and the two judges for the Workers Compensation Appeals Board of the State of California, allegedly conspired (Appendix D, Order Granting in Part..., D.C. #93-5716, CR-23) to deny the petitioner her lawful workers compensation benefits, in order to

punish her for merely exercising her First Amendment rights to freedom of speech, freedom of association, and freedom of inquiry.

On September 30, 1992, Workers Compensation Judge Richard Reyna issued an Opinion where the findings are based on factually erroneous, and highly distorted medical information for purposes of unlawfully denying the petitioner her workers compensation benefits, to punish her for First Amendment activity (D.C. #93-5716, CR-14, exh.#1-Opinion).

On November 4, 1994, the petitioner filed a Petition for Reconsideration with the Workers Compensation Appeals Board of the State of California. On November 5, 1995, the Petition for Reconsideration was denied by Workers Compensation Judge Reyna.

On January 14, 1993, the petitioner filed a Petition for Writ of Review in the Court of Appeals, State of California, Second Appellate District. The defendant Workers

Compensation Appeals Board of the State of California would not file an answer to the Petition for Writ of Review; therefore, the Petition for Writ of Review was denied.

On or about May 18, 1993, the petitioner filed a Petition for Review in the Supreme Court of the State of California. The defendants Workers Compensation Appeals Board of the State of California, and Jacobs and Solomon would not file an answer to the Petition for Review. Therefore, the Petition for Review was denied on June 23, 1993.

On September 21, 1993, the petitioner filed a civil rights action in the U.S. District Court, Central District of California against defendants University of Southern California-administered by Employers Insurance of Wausau, Jacobs and Solomon, and the Workers Compensation Appeals Board for the unlawful denial of workers compensation benefits (D.C. #93-5716, CR-1, Original Complaint, CR-14, Amended Complaint).

REASONS FOR GRANTING THE WRIT

The Pro Se Petitioner, while attempting to vindicate her First, Fourth and Fifth Amendment rights in the United States District Court for the Central District of California, was subjected to such oppressive and offensive, discriminatory, intimidation, harassment, and provocation, that is so unfair and unjustifiable that it violated the petitioner's due process rights under the Fifth and Fourteenth Amendments, as to call for an exercise of this Court's power of supervision.

This Court should review and reverse the decisions below for the following reasons:

1. The petitioner was coerced into dismissing the civil rights actions resulting from the defense and judicial unconstitutional conduct imposed upon her solely because of her African American race, because she is a woman, and because she cannot afford to hire a lawyer to represent her in the proceedings.

2. The Court of Appeals' panel decision to affirm the District Court's decision to dismiss the pro se plaintiff's civil rights actions with prejudice (Appendix B, Order), all the claims, and all the parties, including the defaulted defendants, and not permitting default to be filed against these defaulted defendants, and by not expressing the constitutional standard upon which it acted in affirming District Court, and District Court, by not expressing the constitutional standard upon which it acted, may be sufficient reason to infer constitutional error in both instances.

3. The Court of Appeals Panel by not considering and making determination on any of the substantial constitutional questions raised by the Appellant's due process and equal protection claims, all having been well pleaded in the Appellant's Opening Brief, the Appellant's Reply Brief, along with the highly supportive Excerpts of Records, and all being the determinative factual, material issues the Appellant had heavily relied upon for

just and proper relief in the Court of Appeals, is sufficient reason to infer constitutional error.

The Memorandum issued by the Court of Appeals Panel do not conform to the accepted notion of due process, and instead, appear to have been based upon the idiosyncracies of merely personal, pre-determination, and pre-judgement, because the controversy involve allegations of defense and judicial misconduct, and may be reasonable, probable cause to assume a "poisoning of the panel" as well as the "realistic likelihood of 'vindictiveness'." Blackledge v. Perry, 417, U.S., at 27, 94 S.Ct., at 2102.

Because the Court of Appeals affirmed District Court in abscence of considering and making determination on any of the Appellant's substantive due process, equal protection issues presented on Appeal, and all these being the critical issues the Appellant had relied upon in Court of Appeals for just and

proper relief, this Court should consider the Memorandum for purpose of ascertaining the process of reasoning by which the Court of Appeals Panel arrived at its decision to affirm District Court. This Court should also consider the Memorandum for purposes of determining whether or not the process the Court of Appeals panel used in reaching its decision to affirm District Court conformed to the measures prescribed by federal constitutional law.

> Questions of due process are not to be treated narrowly or pedantically in slavery to forms or phrases. Pearson v. McGras, 60 S.Ct. 211, 308, U.S. 313, 84, L.Ed.293.

The public's interest in fair trials, fair hearings, fair judicial reviews, before a fair tribunal, "designed to end in just judgements", must prevail over these defendants' and their lawyers' "valued right" not to be held accountable, by virtue of power, position, and influence. Wade v. Hunter, 33 U.S. 689, S.Ct., at 837; Sexton v. Barry, 233 F.2d 220, certiorari denied, 77 S. Ct. 94, 352 U.S. 870, I L.Ed 76; Chambers v. State of

Florida, 60 S. Ct. 472, 309 U.S. 227, 84 L.Ed. 716.

ARGUMENTS

I. Pro Se Plaintiff's Request for Dismissal of Civil Rights Actions by Reason of Coercion, Caused by Defense and Judicial Misconduct, Raise Substantial Constitutional Questions

The discriminatory intimidation, acts and threatened acts, harassment, the flagrant manipulation of the Local Rules, and the Federal Rules of Civil Procedure, and the abusive dilatory conduct the petitioner was subjected to by the lawyers representing defendants' University of Southern California, Employers Insurance of Wausau, and Jacobs and Solomon, along with the lawyers representing defendants/respondents Jefferson Logan and Jeffrey Grube, and the District Court appearing to ignore, and/or tolerate the unconstitutional conduct, and in some instances, allegedly, condoned the conduct, thereby causing these lawyers to gain unfair advantage over the petitioner, and was so

dehumanizing, and demoralizing that it was impossible to continue to represent herself under such disadvantageous conditions.

Despite the record indicating the petitioner's highly probable success of prevailing on the merits, by reason of coercion, on July 20, 1994, she submitted a request for dismissal of both civil rights actions, (D.C. #93-5716-CR-44, 45, 46), (D.C. #94-2982-CR-17).

> "Since fair trial in fair tribunal is basic requirement of Due Process..." the petitioner by submitting the request for dismissal of the cases, caused by the defendants' lawyers' discriminatory, illegal behavior and abusive dilatory conduct, and "to escape biased tribunal raise constitutional issues both relevant and essential." USCA. Const. Amend. 14. Holt v. Com. of Va., 85 S. Ct. 1375, 381, U.S. 131, 14 L.Ed.2d. 290; American Cyanamid Co. v. F.T.C., 363 F.2d 757; Lee v. Fleming, 158 F.2d 984, certiorari denied 67 S. Ct., 1186, 331 U.S. 805, 91 L.Ed. 1826.

It is in the inherent power of the District Court to monitor the conduct of attorneys appearing before the Court,

and it is within the Court's discretion to prohibit representation by attorney who may impede the orderly administration of justice. United States v. Dintz, CA5, Fla 542, F2d 1174 and cert. denied 429, U.S. 1104, 51 L.Ed. 2d 556, 97 S. Ct. 1133 (1976). Further, the courts have inherent power to impose sanctions upon attorneys who engage in conduct that results in fundamental unfairness, impinging on due process rights. Caruth v. Pinkney 683 F 2d 1044, cert. denied 459, U.S. 1214, 75, CA & ILL (1982).

> Right to defend pro se is deeply ingrained in our common law, and constitutional dimension of right to defend pro se is evidenced by fact that it has been sustained by various sections of federal constitution, and additionally, right of self-representation was codified in Judiciary Act of 1789 and is presently contained in 28 USCS § 1654; however, the United States Supreme Court has never specifically determined whether or not right to conduct one's own defense is constitutionally guaranteed. People v. McIntyre 36 NY2d 10, 364 NYS2d 837, 324 NE2d, 322.

II. Discriminatory Conditions and Terms Pro Se Plaintiff's Depositions were to be Conducted Under Raise Substantive Due Process Questions

It was reasonably believed that the District Court would appoint a Court Master or Magistrate to place all the witnesses and parties in the controversy under oath and to examine them. Instead, a deposition referee was concertedly, personally selected and appointed by Jeffrey Grube, defense attorney for defendant University of Southern California and Jefferson Logan, who at that time was defense attorney for defendant Jacobs and Solomon, along with Robert Moulton, defense attorney for defendant Employers Insurance of Wausau. The personally selected "hand-picked" deposition referee, allegedly, was associated with the law firm of Sidley and Austin which at that time, represented defendant Jacobs and Solomon. Allegedly, the deposition referee was also associated with the law firm of Paul, Hastings, Janofsky and Walker, representing defendant University of Southern California, and allegedly, the deposition

referee was a close friend of Robert Moulton, defense attorney for defendant Employers Insurance of Wausau. After these attorneys personally selected and appointed their own deposition referee, allegedly, in what appeared to be a "closed door scenario," these attorneys had the District Court to sanction their appointment of this referee with a Court Order (D.C. #93-5716, CR-36).

Implicit in the deposition strategies and tactics was the implication that the petitioner would undergo depositions by the defense attorneys, including defendant Mark Solomon, concertedly and simultaneously, for an undetermined period of time, for an undetermined number of depositions, on undetermined issues and matters, all the terms and conditions being subject to the sole discretion of these attorneys and their "hand-picked" deposition referee.

It was further implied that the male, white-Anglo parties and witnesses in the case, some of them being lawyers, would

not be subjected to depositions.

The discriminatory intent of granting preferences by not subjecting the male, white-Anglo parties and witnesses, some of them being lawyers, to depositions on the same basis, and under the same herein described conditions, discriminates and segregates the petitioner, who is African American, female, and a nonlawyer, from the male, white-Anglo parties and witnesses into unequal classes and unequal treatment, solely on the basis of race, gender, and the preferred socio-economic status of lawyer, and as such raise substantial constitutional questions as applied through the Due Process, Equal Protection Clause of the Fifth and Fourteenth Amendments.

When the petitioner sent a letter to these defendants' lawyers concerning the harassment they were subjecting her to regarding the deposition controversy, a copy of the letter was also sent to the deposition referee. As a result of this letter, allegedly, an ex parte proceeding was held between these

attorneys, the referee and the District Court (D.C. #93-5716, CR-39, 41, 42, 43). These attorneys for defendants' University of Southern California, Employers Insurance of Wausau and Jacobs and Solomon, further using the District Court as a "bully pit," presented factually distorted information regarding the deposition controversy at the alleged ex parte proceedings. District Court construed the letter to be a "threat" to this unconstitutionally selected, and unconstitutionally impanelled deposition referee, and threatened the petitioner with dismissal of the case and the imposition of sanctions, (D.C. #93-5716, CR-event dated 6/23/94, Order). The Order stated that the petitioner should show cause why the case should not be dismissed and the possibility of the imposition of sanctions at a hearing on July 11, 1994, which was the same hearing, and the same time, that the partial defense, Michael Kelley, defense attorney for the defaulted defendant, Jefferson Logan, and the partial defense, Lynette Gridiron, defense attorney for the

defaulted defendant, Jeffrey Grube, had scheduled for the hearing of these defaulted defendants' Joint Motion to Dismiss the Complaint in the related case, (D.C. #94-2982-CR-1,10).

III. Order to Participate in Hearing that Placed the Defense in Position of Advantage Over the Pro Se Plaintiff, Raise Substantive Due Process Questions

In further unconstitutional attempts to coerce the petitioner into dismissing the lawsuits, and further using the District Court as a "bully pit", the partial defense, Michael Kelley, for the defaulted defendant Jefferson Logan, jointly, with the partial defense, Lynette Gridiron, defense attorney for defaulted defendant Jeffrey Grube, on July 11, 1994, scheduled a hearing of these defaulted defendants' Joint Motion to Dismiss the Complaint in the related case (D.C. #94-2982, CR-1,10). These defendants were properly served with the Summons and the Complaint on May 9, 1994; however, these defendants did not file and serve a notice of appearance, or a pleading, or a

motion in the case until these defendants filed and served the Joint Notice of Motion to Dismiss the Complaint on June 20, 1994 (D.C. #94-2982, CR-1,10). Therefore, these defendants were in default when this motion was scheduled for hearing on July 11, 1994.

In addition, the hearing procedure on July 11, 1994, was a procedural violation and would have severely impaired and infringed the petitioner's due process rights, both substantive and procedural, seriously compromising and prejudicing her legal interests in both cases had she participated in that hearing as she had been ordered by District Court.

The partial defense, Michael Kelly defense attorney for the defaulted defendant Jefferson Logan, along with the partial defense Lynette Gridiron, defense attorney for defaulted defendant Jeffrey Grube further using the District Court as a "bully pit" sought to compel and to elicit impermissible discovery information from the petitioner, not only for the benefit of the

partial defense scheduling the hearing, but also for the benefit of the defense for defendant Jacobs and Solomon, who had also failed to file and serve a notice of appearance, or a pleading, or a motion in the case as required by law. The hearing also sought to elicit discovery information for the benefit of the defendant, Robert Moulton, appearing in propria persona in this related case, and is also defense attorney for defendant, Employers Insurance of Wausau.

Further, in addition to the hearing being a procedural violation, and would have substantially deprived the petitioner of a fair hearing, and it appearing that the District Court was tolerating and/or ignoring these attorneys' abusive dilatory conduct throughout the proceedings, the petitioner was highly fearful that had she participated in that hearing, the District Court would have made an erroneous determination had she not complied with providing the partial defense with the impermissible discovery information they sought to compel and

elicit from her at that unconstitutional hearing on July 11, 1994.

As this Court has stated on many occasions, due process requires that a party be afforded a "meaningful" opportunity to be heard. Fuentes v. Shevin 407 U.S. 67, § 1291, 776 F.2d 1512 (1972). Considerations of due process are satisfied only when procedural due process does not place the substantive right at risk, "...because the substantive issue involves a definition of the protected constitutional interest, as well as identification of the conditions under which competing...interests might outweigh..." the petitioner's interests. Washington v. Harper, 494 U.S. 210, 110 S. Ct. 1028.

IV. Dismissal of Pro Se Civil Rights Action With Prejudice, Including Dismissal of Defaulted Defendants and not Permitting Default to be Filed Raise Substantial Constitutional Questions

Defendant Workers Compensation Appeals Board of the State of California has failed to file a notice of appearance, or a pleading, or a motion in the action (D.C. #93-5716) but has had

lawyers present at the hearings. This defendant was in default when the District Court dismissed the case with prejudice. On September 12, 1994, the petitioner filed a default judgment against this defendant. The default documents were returned to the petitioner on September 30, 1994. Nothing in the District Court record reflect this event.

In the related case (D.C. #94-2982, CR-1), defendant Mark Solomon of Jacobs and Solomon, having been properly served with the Summons and the Complaint has also failed to file and serve a notice of appearance, or a pleading, or a motion in the action. This defendant was also in default when the District Court dismissed the cases with prejudice. On June 8, 1994, the petitioner filed default against this defendant, these default documents were also returned to the petitioner (Appellant's Excerpts of Records, exh. #14, Civil Docket for D.C., related case #94-2482 - entry dated 6/8/94).

In the related case, (D.C. #94-2982, CR-1), defendants

Jefferson Logan and Jeffrey Grube were properly served with the Summons and Complaint on May 9, 1994. These defendants had not filed and served a notice of appearance, or a pleading, or a motion in the case until these defendants, on June 20, 1994, collectively filed and served a Joint Notice of Motion to Dismiss the Complaint in this related case (Appellant's Excerpts of Record, Civil Docket for D.C. #94-2982, exh. #14, CR-10). Therefore, these defendants were also in default when the District Court dismissed the cases with prejudice.

V. Factually Altering Documents for Purpose of Misrepresenting the Plaintiff's Person Violates the Plaintiff's Fourth Amendment Rights Under Federal and State Law

On March 2, 1994, pursuant to District Court Local Rule 6.4.2., pertaining to the Early Meeting Conference, defendants Jefferson Logan, who at that time was defense attorney for defendants Jacobs and Solomon, defendant Jeffrey Grube,

defense attorney for defendant University of Southern California, and defendant Robert Moulton, defense attorney for defendant Employers Insurance of Wausau, under "color and cloud" of this Early Meeting Conference, in addition to the documents that were actually and reasonably needed for the defense, produced documents that were totally irrelevant to the subject matter, and completely devoid of principle.

The petitioner alleges that:

These defendants' lawyers produced documents that included, but not limited to, non-workers compensation-related documents, and non-subject matter medical information pertaining to the petitioner's female anatomy which had been factually altered. These private, and confidential, non-subject matter, non-workers compensation related documents, pursuant to a widespread, settled practice and policy of the Workers Compensation Appeals Board of the State of California had been seized, in the course of the workers compensation proceedings,

by subpoena, authorized by defendant Mark Solomon of Jacobs and Solomon, who at that time was defense attorney for defendant University of Southern California-administered by defendant Employers Insurance of Wausau, in violation of the petitioner's Fourth Amendment right to be secure in papers pertaining to her person, as well as the right to be free from these defendants' lawyers' conspiracy to mis-represent her person.

Additionally, there were documents including, but not limited to documents consisting of unsupported, highly provocative language in statements pertaining to the petitioner and her husband's sexual capabilities.

There were documents including, but not limited to documents whereas medical information pertaining to the petitioner's workplace foot injury is factually altered.

There were documents including, but not limited to documents consisting of unsupported factually false statements as to reasons why the petitioner had reopened the workers

compensation case.

There were documents including, but not limited to documents consisting of unsupported, highly provocative language in statements, portraying the petitioner as an African American woman as being ignorant, mentally deficient, incompetent, delusional, and without credibility.

At this time, Jeffrey Grube indicated that he was going to submit to District Court --the next day-- these falsified documents, along with the other documents that were actually and reasonably needed for the case, all to be used at time of trial.

On March 9, 1994, the petitioner filed and served a Memorandum-Brief (D.C. #93-5716, CR-34) regarding what had occurred at the Early Meeting Conference on March 2, 1994 regarding the falsified documents. There was no response to this Memorandum-Brief from these defendants' lawyers or from District Court.

On March 21, 1994, at the Status Conference hearing

(D.C. #93-5716, CR-27, 33), the petitioner brought the matter up regarding the falsified documents. The District Court implied that because the action was one arising from a workers compensation case, such acts regarding the documents would be expected. Subsequently, on May 9, 1994, the petitioner filed the related case (D.C. #94-2982, Complaint, CR-1).

VI. Defense Filing and Serving Court Documents in the Name of a Corporation that is not the Real Party in Interest Raise Substantive Due Process Questions

The real party in interest, defendant Employers Insurance of Wausau, per the corporate office in Wausau, Wisconsin, on or about March 28, 1994, stated that Employers Mutual Liability Insurance of Wisconsin is not also known as Employers Insurance of Wausau, as reflected in some Court documents (D.C. #93-5716, CR-7, 9, 11, 17, 23, 24, 35).

Considering that the record indicate the petitioner's highly probable success of prevailing on the merits in the action,

and considering that had the case gone forth to trial before a jury, the petitioner had the potential for collecting a large monetary judgement. Had the judgement been issued in the name of this non-existing corporation, the petitioner would not have been able to collect the judgment.

VII. The Discriminatory, Intimidation, Harassment, Provocation and Threats, with Respect to Terms and Conditions Required to Conduct the Petitioner's own defense Amounted to a Hostile And Abusive Work Environment

The discriminatory intimidation, harassment, provocation, threat, and the hostility the petitioner was subjected to solely on the basis of her race, gender, and because she was not represented by a lawyer in the proceedings, while attempting to vindicate her First, Fourth, and Fifth Amendment rights in District Court, reasonably compares to the discriminatory intimidation, humiliating, hostile, abusive work environment she was subjected to while employed at defendant University of

Southern California.

While employed at defendant University of Southern California, the male, Korean supervisor almost on a daily basis subjected the petitioner to discriminatory intimidation, ridicule, and harassment, (Workers Compensation Appeals Board of the State of California and Department of Industrial Relations Division of Workers Compensation Appeals Board, Case No. 84 - LA 506-103). Oftentimes on a daily basis, the supervisor;

1) subjected the petitioner's to ridicule, humiliation, and harassment with offensive statement regarding her intelligence,

2) made her pay for the mailing of his personal mail and packages with her own money,

3) would not permit her to driver her own car to the off-campus post office for these purposes, and instead insisted that she walk,

4) subjected her to constant threats of dismissal from the position,

5) oftentimes, insisted that she carry heavy containers of chemical and other heavy objects such as projector screens up and down three flights of stairs on a regular basis,

6) severely downplayed her many years of experience in the area of highly complex biological, Electron Microscopy research techniques, because the supervisor appeared to resent his students seeking her advice and assistance on their research projects.

When the petitioner complained to the Employment Director because of the maltreatment she was being subjected to by this supervisor, the supervisor not only terminated her, but attempted to withhold her final paycheck unless she signed a statement proclaiming that she was incompetent. Of course, the petitioner refused.

By comparison, using Title VII's broad rule pertaining to a discriminatory, intimidating, hostile and abusive work environment on the basis of race, gender, religion, or one's

national origin, and considering that these defendants' lawyers undisputably engaged in similar conduct, while the District Court appeared to ignore, and/or tolerate, and in some instances, appeared to have condoned the abusive dilatory conduct. On the other hand, while the petitioner was participating in good faith, doing no more than what the laws and the rules permitted her to do, the District Court unreasonably threatened the petitioner with dismissal of the case, and the imposition of sanctions, as well as condoned and authorized other oppressive, disadvantageous conditions and terms, that undisputably placed these defendants' lawyers in position to gain unfair advantage over the petitioner in the proceedings, and was so dehumanizing and demoralizing, that it made it impossible to continue to represent herself under such disadvantageous conditions, and as such, is a strong indicator that the petitioner, was required to adhere to a different set of standards, solely on the basis of race, gender, and because she is not represented by a lawyer in the

cases and/or because she is not a lawyer..

The critical issue here is whether the male, white-Anglo lawyers in the proceedings were subjected to the same discriminatory intimidation, threats, hostility, and the same or similar disadvantageous conditions and terms that the petitioner as an African American, as a woman, and not a lawyer was subjected to. Meritor Savings Bank v. Vinson, 477 U.S. 57, 66, 106, S. Ct. 2399, 2405, 91 L.Ed. 49 (1986); Los Angeles Dept. of Water and Power v. Manhart, 435 U.S. 702, 707, n.13, 98 S. Ct. 1370, 1374, 55 L. Ed. 2d 657 (1978).

VIII. The Petitioner Has Raised Issues Which Turn Not Only Upon the Extraordinary Facts Of These Cases, But Will Have Significant Impact On Similar Cases, Because The Cases Raise Significant Issues Of Importance To The Nation's Jurisprudence In Relation To Non-Lawyers' Rights To Defend Pro Se In The Courts of The United States

The extraordinary, unique facts and circumstances surrounding these cases will have a significant impact on other

cases that will inevitably come before this Court, and the courts below, particularly pro se cases.

As this Court well know, the ability of the poor and middle class citizens to obtain legal representation in civil court cases is almost at a crisis level. The poor and middle class citizens simply cannot afford the astronomical up-front legal fees required, even if the case is accepted on a contingency basis.

The legislative history indicate that the costs for legal representation in our courts will continue to escalate. As a result of these spiraling costs, more and more middle class citizens will be forced to conduct his or her own defense, in the nation's courts, particularly in civil actions.

Although 28 USCS § 1654 grants statutory right to defend pro se, this court has never specifically determined whether or not the right to defend pro se is constitutionally guaranteed.

> Right to defend pro se is deeply ingrained in our common law, and constitutional dimension of

> right to defend pro se is evidenced by fact that it has been sustained by various sections of federal constitution, and additionally, right of self-representation was codified in Judiciary Act of 1789 and is presently contained in 28 USCS § 1654. However, the United States Supreme Court has never specifically determined whether or not the right to conduct one's own defense is constitutionally guaranteed. People v. McIntyre 36 NY 2d, 10, 364 NYS 2d 837, 324 NE2d 322 (1974).

Considering the extraordinary, unique circumstances surrounding these cases, in the interest and good of the public, and for purposes of eliminating the uncertainty surrounding pro se representation, this Court should take this opportunity to make the specific determination as to whether or not the "right to conduct one's own defense is constitutionally guaranteed'.

It may have been this uncertainty and the lack of a specific determination regarding the right to defend pro se, that may have contributed to the unconstitutional maltreatment that the petitioner was subjected to while attempting to conduct her own defense.

To punish a human being by threat, force, intimidation, provocation, and harassment such as the petitioner has been subjected to, merely because she was doing what the law allowed her to do, namely to represent herself in District Court for purposes of vindicating her First, Fourth, and Fifth Amendment Rights, is a violation of fundamental and personal rights, "resulting in due process violations of the most basic sort." North Carolina v. Pearce, 395 U.S., at 738, 89, S. Ct.

> "...to pursue a course of action whose objective is to penalize a person's reliance on his legal rights is patently unconstitutional." Chaffin v. Stynchcombe, 412 U.S., 32-33 N. 20,93, S. Ct., (1986); Colton v. Kentucky, 407 U.S., 104, 92 S. Ct. 32 L.Ed. 2d 854 (1953).

Under 28 USCS §§ 1654 and 2071 and USCS Rules of Civil Procedure, Rule 83, United States District Court has discretion to adopt local rules that are necessary to carry out conduct of Court business, including authority to regulate admission to District Court's own bar, but United States Supreme Court has inherent power to ensure that such local

rules are consistent with principles of right and justice. Frazier v. Heebe, 482 U.S. 641, 96 L.Ed. 2d 557, 107, S. Ct. 2607, 7 FR Serv 3d 1139 (1987) on remand (CA 5 La) 825 F 2d 89.

"In the final analysis judgment in each case must be influenced by conviction resulting from examination of the proceedings in their entirety, tempered but not governed in any rigid sense of stare decisis by what has been done in similar situations." 66 S Ct. at 1246, 328 U.S. at 762.

CONCLUSION

For all the foregoing reasons, Pro Se Petitioner, Marjorie Sturgis respectfully pray that the Petition for a Writ of Certiorari be granted, the decisions below reversed, and the cases remanded for reconsideration. Due to the identifiable hostility towards the petitioner because of her race and gender, coupled with pro se status, should the cases be remanded, the petitioner respectfully submit that the proceedings be monitored.

Respectfully submitted,

Marjorie Sturgis

Marjorie Sturgis
8711 South Western Avenue
Los Angels, California 90047
(213) 751-9414

Dated: June 20, 1995

APPENDIX A - MEMORANDUM

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

[Filed March 29, 1995]

MARJORIE STURGIS,

Plaintiff-Appellant,

v.

JEFFERSON K. LOGAN; E. JEFFREY GRUBE; ROBERT MOULTON; MARK SOLOMON,

Defendant-Appellee.

No. 94-56289

D.C. No. CV-94-02982-JGD

-AND-

MARJORIE STURGIS,

Plaintiff-Appellant,

v.

UNIVERSITY OF SOUTHERN CALIFORNIA, Administered by Employers Insurance of Wausau; Jacobs and Solomon,

Defendants-Appellees.

APPENDIX A

No. 94-56312
D.C. No. CV-93-05716-JGD

MEMORANDUM*

Appeal from the United States District Court
for the Central District of California
John G. Davies, District Judge, Presiding

Submitted March 21, 1995**
Before: SNEED, POOLE, and BRUNETTI, Circuit Judges

In these consolidated appeals, Marjorie Sturgis appeals pro se the district court's dismissal with prejudice of her two actions pursuant to 42 U.S.C. § 1983. In the first action (Sturgis I), Sturgis alleged that her petition to reopen he workers compensation case was denied due to a conspiracy by her former

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* This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

** The panel unanimously finds this case suitable for decision without oral argument. Fed. R. App. P. 34(a); 9th Cir. R. 34-4.

employer, the University of Southern California; the University's insurer, Employers Insurance of Wausau; the University's lawyers; and the Workers Compensation Appeals Board of the State of California. In the second action (Sturgis II), Sturgis alleged that the conduct of defense attorneys in Sturgis I, the district court ordered her to show cause why both actions should not be dismissed. In her written response, Sturgis stated that the court "may dismiss" both actions. The district court proceeded to dismiss both actions with prejudice.

We reject the argument that Sturgis waived her right to appeal by consenting to dismissal. It is not clear from the record that Sturgis consented to dismissal with prejudice. We therefore cannot say that the dismissal with prejudice did not constitute an adverse judgment. Compare Seidman v. City of Beverly Hills, 785 f.3d 1447, 1448 (9th Cir. 1986) (this court lacked jurisdiction where appellant agreed to dismiss the action with prejudice).

APPENDIX A

We conclude, nevertheless, that the district court did not abuse its discretion in dismissing both actions with prejudice. See Koch v. Hankins, 8 FT. 3d 650, 652 (9th Cir. 1993) ("district court's determination of the terms and conditions of dismissal under Fed. R. Civ. P. 41(a) (2) [voluntary dismissal with court approval] is reviewed for abuse of discretion"); Wet Coast Theater Corp. V. City of Portland, 897 F.2d 1519, 1523 (9th Cir. 1990) (dismissal for lack of prosecution reviewed for abuse of discretion). Sturgis failed to appear at a July 11, 1994 hearing on (1) an order to show cause why Sturgis I should not be dismissed for her failure to act in good faith,[1] and (2) a motion to dismiss Sturgis II pursuant to Fed. R. Civ. P. 12(b) (6). After Sturgis failed to appear, the district court issued another order to show cause in each action warning of dismissal.

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[1] The district court issued the order to show cause based on Sturgis' having charged the court-appointed discovery referee with bias and having threatened to file a criminal complaint against the defendant and possibly the referee.

APPENDIX A

In both orders to show cause, the district court ordered Sturgis to explain her failure to appear at the July 11, 1994 hearing. In the order to show cause in Sturgis I, the district court ordered her to show cause, as well, for her non-cooperation in the scheduling of her deposition. In her response, Sturgis offered no excuse for her failure to appear at the July 11, 1994 hearing. In fact, she stated that the court may dismiss both actions. As to the deposition, Sturgis stated that she did nor refuse to undergo depositions and that:

> All of the defense attorneys were "pressing" to depose the Plaintiff under what appeared to be, and still appears to be, concerted, conspiratorial conditions and processes, and calculated to harass and intimidate whereas to force her to answer incriminatory questions under "color of law," and would have the effect of compelling the plaintiff to be a witness against herself at time of

trial.

In these circumstances, we cannot say that the district court abused its discretion in concluding that the public policy favoring disposition on the merits was outweighed by Sturgis' dilatory conduct, the court's need to manage its docket, the public's interest in expeditious resolution of litigation, the prejudice to the defendants from Sturgis' conduct, the warnings given to Sturgis, and Sturgis' request that the court dismiss her cases. See Hamilton v. Neptune Orient Lines, Lts., 811 F.2d 498, 499 (9th Cir. 1987) (setting forth factors the district court should consider before dismissing a case for failure to prosecute); Thompson v. Housing authority, 782 F.2d 829, 831 (9th Cir.), cert. denied, 479 U.S. 829 (1986) (setting forth factors the district court should consider before dismissing for failure to comply with a court order).

Nor did the district court abuse its discretion in refusing

to enter default judgments against the defendants because the district court could have had serious reservations about the merits of the complaints. See Eitel v. McCool, 782 F. 2d 1470, 1471-1472 (9th Cir. 1986) (Defendants' failure to satisfy technical requirements does not mandate entry of default judgment; district court, in its discretion, can consider, inter alia, the sufficiency of the complaint and the merits of plaintiffs' claims).

Affirmed.

APPENDIX B

UNITED STATES .DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

[Filed and Entered July 28, 1994]

MARJORIE STURGIS,
Plaintiff,

CASE NO. CV 93-5716 JGD

v.

UNIVERSITY OF SOUTHERN CALIFORNIA - ADMINISTERED BY EMPLOYERS INSURANCE OF WAUSAU, ET AL.,

Defendants.

ORDER OF DISMISSAL

In response to the Court's order to show cause why this action should not be dismissed, the plaintiff filed a request for dismissal. Therefore, this action is DISMISSED with prejudice.

IT IS SO ORDERED.

Dated: July 26, 1994

/s/ John G. Davies

United States District Judge

APPENDIX B

SERVICE LIST

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LOS ANGELES, CA 90047

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ROBT J. DAWS
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PATRICIA M. BERRY
PAUL HASTINGS JANOFSKY & WALKER
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SIDLEY & AUSTIN
JEFFERSON K. LOGAN
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APPENDIX C

EXCERPTS FROM
PLAINTIFF'S AMENDED COMPLAINTS
(December 10, 1993)

CAUSES OF ACTION
FACTUAL ALLEGATIONS:

That having had good cause, the Workers Compensation case was reopened on February 6, 1989.

On June 27, 1992, the plaintiff aggrieved because the case had been subjected to numerous continuances and postponements by the Workers Compensation judge, wrote a letter to the Workers Compensation Appeals Board Administrative Director in an endeavor to try and get the claim resolved.

On or about July 30, 1992, the plaintiff received a notice stating that the case had been set for trial on August 12, 1992.

On the August 12, 1992 trial day, Judge Nakagawa, instead of proceeding with a usual and customary court procedure, circulated the subject letter to the defense attorney, Mark Solomon. The defense attorney referred to the letter as

being "clout" and that it could be used to appeal the decision made in the case. Judge Nakagawa then proceeded to admonish, reprimand and demand that the plaintiff recant and deny the subject letter contents. The plaintiff refused.

Along with admonishing and reprimanding the plaintiff, Judge Nakagawa threatened to withdraw from the case if the plaintiff did not renounce the letter. The plaintiff, overwhelmed by such unconscionable, shocking actions, began to cry uncontrollably. Everyone left the court room.

Plaintiff had assumed that the trial for the day was over, but after a short while, everyone returned to the court room. Again, Judge Nakagawa proceeded to admonish, reprimand and to make threats of withdrawing from the case if the plaintiff did not renounce the letter. Again, the plaintiff refused and Judge Nakagawa announced that he was withdrawing from the case and abruptly left the courtroom.

APPENDIX C

Also, during those times, it appeared that there may have been a loss obliteration and/or re-arrangement of evidence by the flagrant use of "off the record" by the judge to the court reporter, probably making it difficult to establish the true circumstances of the "trial" on that day.

On the same day, shortly after the judge withdrew from the case, the defense attorney, Mark Solomon took the subject letter along with the plaintiff's file and gave both to Judge Reyna and asked him to hear the case. Judge Reyna wanted to hear the case right away, but the defense attorney indicated that he had another appointment and could not stay for the trial, subsequently, the trial day was reset for September 14, 1992.

On August 17, 1992, the plaintiff wrote a letter to the Workers Compensation Appeals Board Administrative Director informing him of the events that took place on the August 12, 1992 "trial day." A reply was never received regarding the letter.

On the September 14, 1992 trial day, before going on

record, Judge Reyna indicated that there was no need to go into detail of the case because there w enough information to make a decision. During the trial by employing relentless baiting, badgering, plucking and blending tactics, the defense attorney had the plaintiff to divulge irrelevant aspects of personal matters for no purpose other than to intimidate and to humiliate the plaintiff. Also, the plaintiff was further intimidated with under current threats of fraud and perjury by the workers compensation judge and the defense attorney for having reopened the case. Also, supportive medical evidence was unconscionably down-played or completely ignored and such evidence may have been purged from the Workers Compensation Appeals Board files.

APPENDIX D

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

[Filed and Entered February 4, 1994]

[THIS CONSTITUTES NOTICE OF ENTRY AS REQUIRED BY FRCP, RULE 77 (d)]

MARJORIE STURGIS,

PLAINTIFF,

V.

UNIVERSITY OF SOUTHERN CALIFORNIA-ADMINISTERED BY EMPLOYERS' INSURANCE OF WAUSAU; JACOBS & SOLOMON (ATTORNEYS OF RECORD) AND WORKERS' COMPENSATION APPEALS BOARD OF THE STATE OF CALIFORNIA,

DEFENDANTS.

CASE NO. CV 93-5716

ORDER GRANTING IN PART DEFENDANT USC'S MOTION TO DISMISS AND DENYING THE MOTIONS TO DISMISS OF DEFENDANTS JACOBS & SOLOMON AND EMPLOYERS MUTUAL LIABILITY INSURANCE COMPANY OF WISCONSIN

APPENDIX D

On January 31, 1994, the Court heard argument on motions to dismiss filed by defendants University of Southern California (USC), Jacobs & Solomon and Employers Mutual Liability Insurance Company of Wausau (Wausau). After reviewing the written submissions of the parties and the oral arguments of counsel, the Court hereby GRANTS IN PART USC's motion and DENIES the motions of Wausau and Jacobs & Solomon.

FACTS

On September 21, 1993, plaintiff Marjorie Sturgis filed this civil rights action against defendants USC, Wausau, Jacobs & Solomon, and the Workers Compensation Appeals Board of the State of California (WCAB).

The case arises from a workplace injury which the plaintiff suffered while employed by USC in 1984. [See Amended Complaint, Ex. 1]. The plaintiff first filed an application for state workers compensation benefits on or about May 10, 1984. On

November 30, 1987, she received a benefits award. Thereafter, the plaintiff filed a petition to reopen her claim with the WCAB. Jacobs & Solomon represented USC during the proceedings. The WCAB denied the petition on September 30, 1992.

In this action, the plaintiff contends that a Jacobs & Solomon attorney Mark Solomon, conspired with two WCAB judges during the hearings on her petition to reopen, thereby depriving her of various constitutional rights.

USC, Wausau and Jacobs & Solomon moved to dismiss the Complaint. On December 6, 1993, the Court granted the motion with leave to amend, finding that the Complaint was so lengthy and confusing that it did not comply with the requirements of Fed.R.Civ.P.8.

The plaintiff filed her Amended Complaint on December 10, 1993. The Amended Complaint states that the action is brought under 42 U.S.C. §§ 1983 and 1985 based on underlying violations of the First, Fifth, Eighth and Fourteenth Amendments

to the United States Constitution. Defendants Wausau, Jacobs & Solomon and USC again move to dismiss.

Wausau argues that the Court lacks subject matter jurisdiction because this action is, in essence, a claim for workers' compensation benefits, not a federal question. It also moves to dismiss the claim for punitive damages on the grounds that California Civil Code § 3294 requires more specific pleading.

Jacobs & Solomon, appearing pro se, makes the same subject matter jurisdiction argument as does Wausau. Further, it argues that the Amended Complaint fails to allege sufficient facts to establish a conspiracy between it and the WCAB judges, and contends that it cannot have conspired with the judges since they enjoy immunity.

USC moves to dismiss the § 1983 and § 1985 claims for failure to state a claim. First, USC argues that it can only be liable as an institution under a Monell theory and the Amended Complaint does not allege that USC had a policy or custom of

unlawfully interfering in workers compensation proceedings. Second, it argues that the alleged conspiracy between attorney Solomon and the WCAB judges is not pled with adequate specificity. Third, with respect to the § 1985 claim only, USC contends that the complaint fails to allege a class-based animus on the part of any defendant.

DISCUSSION

A. Subject Matter Jurisdiction

The jurisdictional attack raised by Wausau and Jacobs & Solomon must be addressed at the outset. Both parties argue, in essence, that this is a workers compensation case masquerading as a constitutional tort. Wausau P&A at 3-6; Jacobs & Solomon P&A at 8.

When a defendant challenges subject matter jurisdiction, the plaintiff bears the burden of proof. Stock West, Inc. V. Confederated Tribes, 873 F.2d 1221, 1225 (8th Cir. 1989). The allegations in the complaint are taken as true where, as here, a

12(b) (1) motion is based solely on the face of the complaint. Schwarzer, Wallace & Tashima, Federal Civil Procedure Before Trial § 9:84 (1993).

The Amended Complaint states that jurisdiction is invoked pursuant to 28 U.S.C. § 1343 and that the action is brought under 42 U.S.C. §§ 1983 and 1985. Amd. Complt., para.2. Subsections (a)(1) - (a)(3) of section 1343 give the district courts jurisdiction for claims brought under sections 1983 and 1985. Although the action arises from workers compensation proceedings, the constitutional injury alleged is an independent one: a conspiracy between WCAB judges and attorney Mark Solomon to deprive the plaintiff of her rights. Thus, the Amended Complaint clearly demonstrates that the Court has subject matter jurisdiction.

B. Wausau's Motion

Wausau makes one argument other than the absence of

subject matter jurisdiction. It contends that the plaintiff's claim for punitive damages should be dismissed because Cal. Civ. Code § 3294 requires specificity in pleading claims for punitive damages against corporations. P&A at 6-8. This contention is patently invalid since the availability of punitive damages is a question of federal law. Wausau's motion is therefore denied.

C. Jacobs & Solomon's Motions

The Court encounters two initial difficulties in considering this motion. First, there is a question of proper service. The proof of service indicates that the motion was mailed to the plaintiff at an address on 78th Street in Inglewood, while the plaintiff consistently has used an address on Western Avenue in Los Angeles. Second, the instant motion states that Jacobs & Solomon appears pro se. Under Local Rule 2.9, neither a corporation nor an unincorporated association may appear pro se. Thus, while attorneys Jacobs and/or Solomon can represent the

firm, the firm cannot represent itself.

On the merits, the motion is not meritorious. Jacobs & Solomon argues that it cannot have conspired with WCAB judges because of judicial immunity. P&A at 11. This contention is legally frivolous. In Dennis v. Sparks, 449 U.S. 24 (1980), the plaintiff brought a § 1983 action against a state court judge and private parties who allegedly conspired with the judge. The Supreme Court stated:

> here the allegations were that an official act of the defendant judge was the product of a corrupt conspiracy involving bribery of the judge. Under these allegations, the private parties conspiring with the judge were acting under color of state law; and it is of no consequence that the judge himself is immune from liability. Immunity does not change the character of the judge's action or that of his co-conspirators.

Id. at 28.

Jacobs & Solomon cites Dennis for the basic proposition that "merely resorting to the courts and being on the winning side

of a lawsuit does not make a party a co-conspirator or a joint actor with the Judge," but fails to recognize that the holding of Dennis defeats its immunity argument. This misreading of Dennis is a glaring error and probably worthy of sanctions under Fed.R.Civ.P. 11, a point the Court may revisit later in these proceedings.

Jacobs & Solomon's other argument is that the Amended Complaint fails to plead the conspiracy between Solomon and the WCAB judges with adequate specificity. Since USC also makes this argument and does so more thoroughly, it will be addressed in the following section.

D. USC's Motion

1. The Standard

The Ninth Circuit's position on motions to dismiss pursuant to Rule 12(b) (6) is as follows:

'A complaint should not be dismissed for failure

> to state a claim unless it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim that would entitle him to relief.' Conley v. Gibson, 355 U.S. 41, 45-46, 78 S.Ct. 99, 101-102, 2 L.Ed.2d 80 (1957). All allegations of material fact are taken as true and construed in the light most favorable to the non-moving party.

Hall v. City of Santa Barbara, 813 F. 2d 198, 201, n.9 (9th Cir. 1986), cert. denied, 485 U.S. 940 (1988). It "is axiomatic that the motion to dismiss for failure to state a claim is viewed with disfavor and is rarely granted." Id. Additionally, it is well established that the allegations in a pro se complaint must be treated with particular liberality. Hughes v. Rowe, 449 U.S. 5, 9 (1980) (per curiam).

2. The 42 U.S.C. § 1985 Claim and Class-Based Animus

Section 1985 contains several discrete provisions. The Ninth Circuit has summarized them as follows:

Section 1985(1) concerns preventing an officer of the United States from performing his or her duties. The first clause of section 1985(2) concerns conspiracy to obstruct justice in the federal courts, or to intimidate a party, witness or juror in connection therewith. The second clause of § 1985(2) provides a cause of action if:

> two or more persons conspire for the purpose of impending, hindering, obstructing, or defeating, in any manner, the due course of justice in any State or Territory, with intent to deny any citizen the equal protection of the laws, or to injure him or his property for unlawfully enforcing, or attempting to enforce, the right of any person, or class of persons, to the equal protection of the laws.

The first clause of § 1985(3) provides a cause of action for a private conspiracy to deny equal protection of the laws. The second clause of § 198 (3) provides a cause of action for conspiracy:

> for the purpose of preventing or hindering the constituted authorities of any State or Territory from giving or securing to all persons within such State or Territory the equal protection of the laws.

The third clause of § 1985(3) provides a cause of action for a conspiracy to interfere with federal elections.

Bretz v. Kelman, 773 F.2d 1026, 1029 n. 3 (9th Cir. 1985) (en

banc).

The Amended Complaint does not specify what provisions of § 1985 is at issue. Since there is no charge of wrongdoing related to a federal forum or authorities, the claim cannot be made under § 1985(), the first clause of § 1985(2) or the third clause of § 1985(3).

With the exception of claims under the first clause of § 1985(2), § 1985 claims require an allegation of class-based discriminatory animus. Zemsky v. City of New York, 821 F.2d 148, 151 and n.2 (2d Cir. 1987); see also Bray v. Alexandria Women's Health Clinic, 113 S. Ct. 753, 765 (1993) (second clause of § 1985 (3) "would seem" to require class-based animus); Kush v. Rutledge, 460 U.S. 719 (1983) (first clause of § 1985 (2)); Bretz, 773 F.2d at 1030 (second clause of § 1985(2) requires class-based animus).

The Amended Complaint contains absolutely no allegation of class-based animus. At oral argument, the Court asked the

plaintiff if she was a victim of class-based animus and she replied in the negative. Accordingly, the Court dismisses the § 1985 claim with respect to all defendants, without leave to amend.

3. Monell Liability of Private Entities

USC argues that it can only be liable to the plaintiff on her § 1983 claim under Monell v. Dept. of Social Services, 436 U.S. 658 (1978). That case limited the § 1983 liability of local government entities to acts committed pursuant OT an official policy or custom.

As USC correctly contends, the Courts of Appeal have extended the Monell theory of liability to private entities charged with the acts of their agents, rejecting the applicability of respondeat superior. See, e.g., Sanders v. Sears, Roebuck & Co., 984 F.2d 972 (8th Cir. 1993); Rojas v. Alexander's Dept. Store, Inc., 924 F.2d 406, 408 (2d Cir. 1990), cert. denied, 112 S. Ct. 52 (1991); DeVargas v. Mason & Hanger-Silas Mason Co., 844

F.2d 714, 723 (10th Cir. 1988). Although there apparently is no Ninth Circuit opinion on point, the Court finds these cases persuasive. USC's liability must therefore be analyzed under Monell.

The Ninth Circuit recently provided a comprehensive statement of the bases of Monell liability:

> A section 1983 plaintiff may establish municipal liability in one of three ways. First, the plaintiff may prove that a city employee committed the alleged constitutional violation pursuant to a formal governmental policy or a "longstanding practice or custom which constitutes the 'standard operating procedure' of the local governmental entity." Jett v. Dallas Indep. Sch. Dist., 491 U.S. 701, 737, 109 s. Ct. 2702, 105 L. Ed. 2d 598 (1989) (Jett) (internal quotation omitted); accord Monell, 436 U.S. at 690-91. Second, the plaintiff may establish that the individual who committed the constitutional tort was an official with "final policy-making authority" and that the challenged action itself thus constituted an act of official governmental policy. See Pembaur v. City of Cincinnati, 475 U.S. 469, 480-481, 89 L. Ed. 2d 452, 106 S. Ct. 1292 (1986) (Pembaur); McKinley v. City of Elroy, 705 F.2d 1110, 1116 (9th Cir. 1983) Whether a particular official has final policy-making authority is a question of state

> law. See Jett, 491 U.S. at 737; City of St. Louis v. Praprotnik, 485 U.S. 112, 123-24, 99 L. Ed. 2d 107, 108 S. Ct. 915 (1988) (plurality opinion) (Praprotnik). Third, the plaintiff may prove that an official with final policy-making authority ratified a subordinate's unconstitutional decision or action and the basis for it. See Praprotnik, 485 U.S. at 127; Hammond v. County of Madera, 859 F.2d 797, 801-02 (9th Cir. 1988) (Hammond).

Gillette v. Delmore, 979 F.2d 1342, 1346-47 (9th Cir. 1992), cert. Denied, 114. S. Ct. 345 (1993).

The Amended Complaint alleges that attorney Mark Solomon conspired with the WCAB judges. Solomon is repeatedly identified as "employed" by the University of Southern California, which is "administered by Wausau. Amd. Complt., paras. 6, 21, 22, and 23. Thus, construing the complaint liberally, Solomon can be considered an agent of all three private party defendants: Jacobs & Solomon, Wausau and USC.

Paragraph 25 of the Amended Complaint alleges that the WCAB, USC and Wausau are "responsible because of their

authorization and ratification" of the "acts of their agents, employees, [and] servants." The allegation of ratification, albeit unlikely, is sufficient to state a claim for Monell liability under the third (ratification) prong in Gillette. There may also be liability under the second (action by a policy maker) prong of Gillette. The plaintiff would have to prove that Solomon had final policymaking authority for the private entity defendants.

Thus, construing the Amended Complaint in her favor, the plaintiff has stated a valid Monell claim with respect to USC.

4. The Adequacy of the Conspiracy Allegations

USC argues that the § 1983 claim is deficient because the conspiracy between Solomon and the WCAB judges is not pled with enough specificity.

The conspiracy element is essential to this § 1983 claim. While normally only state officials are liable, private parties may act under color of law where there is "significant state

involvement" in their action. Lopez v. Dept. of Health Services 939 F.2d 881, 883 (9th Cir. 1991) (quoting Howerton v. Gabica, 708 F.2d 380 (9th Cir. 1983). The Supreme Court has articulated a number of tests to determine when the state's involvement is "significant." Under the governmental nexus test, a private party acts under color of law if "there is a sufficiently close nexus between the State and the challenged action of the regulated entity so that the action of the latter may be treated as that of the state itself." Id. (quoting Jackson v. Metropolitan Edison Co., 419 U.S. 345, 351, 95 S. Ct. 449, 453, 42 L.Ed.2d 477 (1974). Under the joint action test, a private party acts under color of law if "he is a willful participant in joint action with the State or its agents." Id. (quoting Dennis v. Sparks, 449 U.S. 24, 27, 101 S. Ct. 183, 186, 66 L.Ed. 2d 185 (1980)).

The Ninth Circuit has stated that claims under the Civil Rights Act, which includes § 1983 claims, cannot consist merely of "conclusionary allegations, unsupported by facts." Sherman v.

Yakahi, 549 F.2d 1287, 1290 (9th Cir. 1977). Rather, the complaint must "allege with some degree of particularity overt acts which defendants engaged in" that support the plaintiff's claim. Id. Hence, while the determination of whether a defendant was acting under color of state law is "fact bound" and should not be resolved with undue haste, "a defendant is entitled to more than the bald legal conclusion that there was action under color of state law." Price v. State of Hawaii, 939 F.2d 702, 708 (9th Cir. 1991).

The Court finds that there are adequate allegations of conspiracy to withstand the motion to dismiss. The Amended Complaint describes events at two specific court proceedings and includes factual details supporting the existence of a collusive relationship between Solomon and the WCAB judges. For example, at the hearing on September 14, 1992, Judge Reyna and Solomon both threatened the plaintiff with fraud and perjury. Amended Complaint, para. 16.

APPENDIX D

Conclusion

For reasons discussed above , the Court hereby dismisses the plaintiff's claim under 42 U.S.C. § 1985 with respect to all defendants without leave to amend. Defendants' motions in all other respects are denied.

IT IS SO ORDERED.

Dated: February 2, 1994.

/s/ John G. Davies
United States District Judge